United Postal Service *and* Thomas M. Dalton. Case 19–CA–17268(P)

March 29, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT, DEVANEY, AND OVIATT

I. PROCEDURAL HISTORY

On March 31, 1986, the Board issued a Decision and Order in this proceeding[1] in which it found based on the stipulated record, that the Respondent, United States Postal Service, violated Section 8(a)(1) and (2) of the Act by refusing to honor Charging Party Thomas M. Dalton's revocation of a union dues-checkoff assignment, despite the fact that Dalton had effectively resigned from membership in the Union, the American Postal Workers Union, AFL–CIO. The Board based its decision on the following facts. Dalton signed an authorization for dues checkoff in October 1982. It contained a 1-year irrevocability clause, renewable annually unless written notice is provided the Union between l0 and 20 days prior to its anniversary date. On January 25, 1985, Dalton submitted to the Union a written resignation from membership, stating that notwithstanding the irrevocability provisions noted above, he wished also immediately to revoke his dues-checkoff authorization. On January 28, 1985, Dalton requested the Respondent Postal Service to revoke his dues checkoff. The Respondent refused to honor Dalton's checkoff revocation on the grounds that it was not made during the time period specifically provided for by the terms of the checkoff authorization.[2]

In finding the Respondent's refusal to give effect to the revocation unlawful, the Board applied the rule enunciated in *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 (1984). The rule states that when the terms of a dues-checkoff authorization make payment of dues a ''quid pro quo'' for union membership—that is, when the language of the checkoff indicates that dues are being paid to a union in exchange for membership in that union—the checkoff is revoked ''by operation of law'' when the member resigns from the union.[3]

Because the Respondent was subject to the Postal Reorganization Act of 1970 (PRA) (39 U.S.C. § 101 et seq.), and because the PRA had its own provision governing checkoff, the Board looked also to the language of that provision to make certain that its application of the *Eagle Signal* doctrine was appropriate when the employer was the Postal Service. The Board concluded that, although there were some slight differences in wording between the PRA checkoff provision (39 U.S.C. § 1205), and the analogous provision in Section 302(c)(4) of the Labor Management Relations Act of 1947 (29 U.S.C. § 186(c)(4)),[4] the provisions were basically ''in line'' with each other, and thus both could properly be given the same construction. Accordingly, the Board followed *Eagle Signal* and found that because Dalton's checkoff authorization specified that it was his ''regular and periodic dues'' that were to be deducted from his wages, his dues were clearly a ''quid pro quo'' for union membership. The Respondent was therefore required to honor his revocation of checkoff immediately on his resignation from the Union.

On September 4, 1987, the United States Court of Appeals for the Ninth Circuit denied enforcement of the Board's Decision and Order and remanded the case for further consideration.[5]

The court majority held that, although the Board's construction of PRA section 1205 as consistent with Section 302(c)(4) of the LMRA was ''reasonably defensible,'' the Board had not enunciated a ''reasoned basis'' for the ''quid pro quo'' doctrine of *Eagle Signal* and therefore had applied that rule improperly. While concurring with the majority's remand order, Judge Fletcher criticized the Board's interpretation of PRA section 1205 and stated that the plain language of that section, unlike that of the LMRA, mandates a period of checkoff irrevocability even if a member resigns from the union.

The Board accepted the court's remand on February 16, 1988. Thereafter the General Counsel filed a brief and the Respondent and the Intervenor-Union filed a joint brief.

[1] 279 NLRB 40.

[2] The language of Dalton's dues-checkoff form is as follows:

AUTHORIZATION FOR DEDUCTION OF UNION DUES

UNITED STATES POSTAL SERVICE

Date _____

I hereby assign to _____(Union)_____ from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the Union may certify as due and owing from me, as may be established from time to time by said Union. I authorize and direct you to deduct such amounts from my pay and to remit same to said Union at such times and in such manner as may be agreed upon between you and the union at any time while this authorization is in effect.

This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year.

This assignment is freely made pursuant to the provisions of the Postal Reorganization Act and is not contingent upon the existence of any agreement between you and my Union.

[3] *Eagle Signal*, supra at 637.

[4] 279 NLRB at 42 fn. 3. The texts of both of these provisions are set out below in fns. 10 and 11. The Labor Management Relations Act of 1947 (LMRA) was added as an amendment to the National Labor Relations Act (the Act).

[5] 827 F.2d 548.

II. THE PARTIES' POSITIONS ON REMAND

In its joint brief, the Respondent and the Intervenor-Union urge the Board to consider the merits of the reviewing court's concurring opinion (a position these parties had themselves previously raised before the Board), and they suggest that the Board reconsider its interpretation of PRA section 1205. They note that since the remand, the Sixth Circuit has denied enforcement in a similar case, *NLRB v. Postal Service*, 833 F.2d 1195 (1987), and endorsed and elaborated on Judge Fletcher's concurrence.

The General Counsel urges the Board to adhere to its earlier construction of section 1205 of the PRA, and therefore argues that the case should be decided under the same legal theory that the Board employs when deciding the checkoff revocation issue with respect to employers other than the Postal Service. In that regard, he suggests that either of two theories would support the position that there should be no obligation to pay dues after revocation of checkoff: (1) that a requirement that an employee continue to pay dues after resigning from the union and attempting to revoke checkoff impairs the employee's Section 7 right to resign as recognized by the Supreme Court in *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985); and (2) that even assuming that resignation from the union does not automatically revoke checkoff, it should at least, in the absence of a union-security clause, reduce the amount required to be checked off to zero.[6]

III. ANALYSIS

We have considered the entire record, the court's decision, and the parties' briefs, and we have decided to reverse the Board's earlier decision, because we have reconsidered our construction of section 1205 of the PRA. We have determined, for the reasons set out below, that, unlike the statutory language applicable to private sector employers other than the Postal Service, section 1205 requires the Postal Service to honor a checkoff authorization's irrevocability period if it is for not more than a year, notwithstanding an authorization signer's resignation from union membership during that period. Therefore the Respondent did not violate Section 8(a)(1) and (2) of the Act when it refused to honor Charging Party Dalton's checkoff revocation.

In reaching this conclusion, we acknowledge that the panel majority of the Ninth Circuit had upheld our earlier contrary construction of the PRA, and had remanded this case to give the Board the opportunity to provide a more reasoned basis for its Eagle Signal doctrine. We have, in fact, reconsidered that doctrine in another case decided today.[7] Because our reconsideration of the meaning of section 1205 of the PRA now makes that provision dispositive of this case, however, we do not reach the issue of the legality of the Respondent's actions without respect to the PRA.[8] We believe that this does not violate the terms of the remand, because the panel majority merely held that our earlier construction of the PRA was ''reasonably defensible,'' not that it was the only possible reading of the statutory language. We therefore conclude that we are free to reconsider our construction of that language. See *NLRB v. Iron Workers Local 103*, 434 U.S. 335, 351 (1978).[9]

Section 1205(a) of the PRA provides, in pertinent part, that the Postal Service shall deduct ''regular and periodic'' union dues from the pay of unit employees who are members of labor or personnel organizations that hold certain representational or consultation rights if it ''has received from each employee, on whose account such deductions are made, a written assignment which shall be irrevocable for a period of not more than one year'' (emphasis added).[10] The analogous provision in the LMRA, Section 302(c)(4), refers to an employer's receipt of ''a written assignment *which shall not be irrevocable for a period of more than one year*, or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner.'' (Emphasis added.)[11] In the Board's prior de-

[6] The second theory is the position enunciated by former Member Johansen in the underlying case. See 279 NLRB at 42 fn. 5.

[7] *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991).

[8] We note, however, that were we to decide this case under the theory set out today in *Lockheed*, we would reaffirm the original decision that the Respondent violated Sec. 8(a)(1) and (2) of the Act by refusing to honor Dalton's checkoff revocation after he resigned from the Union.

[9] We note that after the court of appeals remanded this case to the Board, the United States Court of Appeals for the Sixth Circuit issued an opinion, *NLRB v. Postal Service*, 833 F.2d 1195 (1987), declining to enforce the Board's order regarding checkoff revocation in a similar Postal Service case. Relying on reasoning similar to that of Judge Fletcher's concurrence, it held, inter alia, that sec. 1205 of the PRA plainly authorized the enforcement of irrevocability provisions of up to 1 year in union-dues authorizations. *NLRB v. Postal Service*, supra, 833 F.2d at 1199.

[10] The complete text of sec. l205 reads as follows:

> (a) When a labor organization holds exclusive recognition, or when an organization of personnel not subject to collective-bargaining agreements has consultation rights under Section l004 of this title, the Postal Service shall deduct the regular and periodic dues of the organization from the pay of all members of the organization in the unit of recognition if the Post Office Department or the Postal Service has received from each employee, on whose account such deductions are made, a *written assignment which shall be irrevocable for a period of not more than one year.*
>
> (b) Any agreement in effect immediately prior to the date of enactment of the Postal Reorganization Act between the Post Office Department and any organization of postal employees which provides for deduction by the Department of the regular and periodic dues of the organization from the pay of its members, shall continue in full force and effect and the obligation for such deductions shall be assumed by the Postal Service. No such deduction shall be made from the pay of any employee except on his written assignment, which shall be irrevocable for a period of not more than one year. [Emphasis added.]

[11] Sec. 302 of the LMRA reads in pertinent part:

> (a) It shall be unlawful for any employer . . . to pay, lend, or deliver, any money or other thing of value—
>
> (1) to any representative of any of his employees; or
>
> (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer. . . .

Continued

cisions construing PRA section 1205(a), the Board acknowledged that its wording was somewhat different from that of LMRA Section 302(c)(4), but concluded that the differences—which consisted mainly in a different placement of the word ''not''—were not sufficiently great to warrant reading the two provisions differently.

We have reconsidered that reasoning and now reach a different conclusion, relying on the plain meaning of the irrevocability provision of PRA section 1205(a), the particular system of labor relations among postal employees that existed prior to the enactment of the PRA, and other differences between the PRA and the Act suggestive of a legislative tradeoff in which the Postal Service unions were denied the right, enjoyed by private sector unions, to negotiate union-security clauses, but were guaranteed a limited period of checkoff irrevocability.

As critics of the Board's construction of the PRA have pointed out, this difference in language between the two statutes has the following impact: the words of the PRA *require* that some period of checkoff irrevocability exist (''shall be irrevocable''), while the words of the Act *allow* for, but do not mandate, a period of irrevocability. The Act merely places a time limit on the authorization *if* the parties agree to some period of irrevocability. There is no such similar flexibility under the PRA. This means that although an employee of the Postal Service may resign union membership at any time, the employee cannot at the same time effectively revoke his or her checkoff unless the checkoff revocation occurs outside the periods of irrevocability mandated by the PRA and specified by the terms of the checkoff.[12]

Although, as the remanding court observed, the legislative history of the checkoff provision in the PRA is somewhat ''meager,'' there is nothing in that history that compels a reading contrary to its plain meaning; and, that meaning is reinforced by an examination of the existing labor relations context to which the statute was to apply. As the Board previously has acknowledged, ''A thorough examination of the numerous Committee reports and floor debates on the PRA discloses no indication that Congress was particularly concerned with the details of checkoff revocation (except for the establishment of the maximum of a 1-year revocation period).''[13] A fresh look at the legislative history of the labor relations provisions of the PRA reveals only that (1) most clearly, Congress intended to extend to Postal Service employees certain organizational rights guaranteed to private sector employees under the Act, and (2) Congress wanted to ensure against compulsory unionism in the Postal Service by precluding the option of a union-shop agreement. Beyond those fundamental concerns, however, there is little congressional guidance offered in the way of statutory construction. Accordingly, in the absence of persuasive evidence of contrary legislative objectives, we should accord the words of the PRA their apparent meaning—even if it differs from that which would apply under the Act.

Further, although Congress referred to the Act as a model for the PRA's labor relations sections (and conferred jurisdictional authority for their effectuation on the Board), the Act was not the sole basis on which those parts of the statute were founded. Prior to the the PRA's enactment, labor relations in the then-Post Office Department, like those of other Federal employers, were governed by Executive Order 11491 (34 Fed.Reg. 17605 (1969)), and applicable Civil Service regulations.[14] Section 21(a) of that Executive Order provided for a method of voluntary checkoff for employees' union dues, and specified that applicable regulations ''shall include provision for the employee to revoke his authorization at stated six-month intervals.'' (Emphasis added.) A memorandum of understanding entered into thereunder by the Post Office Department granted checkoff privileges to several postal employee unions which stated that, while checkoff revocations could be submitted by employees at any time, the revocations would not become effective until the following March 1 or September 1, those dates being the ''stated six-month intervals.'' Thus, under the immediately prior governing authority, there were only two designated time periods per year during which postal employees' revocation of their dues-checkoff author-

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money . . . .

. . . .

(c) The provisions of this section shall not be applicable . . . .

. . . .

(4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; . . . [Emphasis added.]

[12] We acknowledge that sec. 1205(a) includes a reference to ''members,'' but we do not read this as a requirement that dues can continue to be deducted only for those who remain members. We believe that Congress must have meant only that all employees who actually signed authorizations would have their dues checked off, with no omissions; and, conversely, that the Postal Service would not check off dues for someone who had failed to submit an authorization. Indeed, it would be absurd to assume that Congress was mandating that ''*all* members'' (emphasis added) must have signed checkoff authorizations before *any* member could have his dues deducted or that the deduction system for all those paying dues would be invalidated if dues were deducted for *some* employee who had failed to submit an authorization. It may be that the term ''members''—which appeared in both the House and Senate bills that lay behind the law that emerged from the conference committee (H.R. 17070 Sec. 226 and S. 3842 Sec. 1305, 91st Cong. 2d Sess. (1970))—is merely an inadvertent survivor from a period before it was finally determined that union-security agreements like those authorized by the proviso to Sec. 8(a)(3) of the Act would not be permitted in the Postal Service (see discussion below). Whatever the reason for its appearance in this section, however, we do not find that it compels a construction contrary to the one we adopt in this decision.

[13] *Postal Service*, 248 NLRB 5, 7 (1980).

[14] 5 C.F.R. 550.321 et seq.

ization could take effect. With this restriction as predicate, the language of PRA section 1205 requiring that checkoffs be made irrevocable for some period of time appears to be a direct and logical reflection of existing practice in postal employment.[15]

This is not the only area in which Postal Service employment differs from the private sector. One obvious, and perhaps most fundamental difference is that postal employees, like Federal employees, are not permitted to strike. Instead, the PRA provides for resolution of what in the private sector might be strike issues through arbitration.[16] Another significant difference, appearing in the same section of the PRA as the subject of the instant proceeding, permits dues deductions in two situations which the Act would not contemplate. First, section 1205(a) extends checkoff privileges to organizations that do not have collective-bargaining rights for their members, e.g., supervisory associations. Second, section 1205(b) authorizes the perpetuation of checkoff arrangements in effect prior to the enactment of the PRA involving organizations that are not exclusive bargaining representatives.[17]

But perhaps the most revealing example of how the PRA's approach differs from the Act concerns the area of union security. As mentioned above, the legislative history of the PRA reveals that Congress did not want postal employees to be bound by any form of compulsory unionism. This objective resulted in a broad proscription against any form of union security arrangement, as set forth in PRA section 1209(c).[18] By virtue of these provisions banning any type of involuntary union support, postal employees are entirely free to choose whether or not they want to become union members even in the limited ''financial core'' sense—a status that may be compelled under union-security clauses permitted by the proviso to Section 8(a)(3) of the Act—,[19] and, further, whether they wish to satisfy these voluntarily assumed dues responsibilities by means of a checkoff. A plausible reading of the ways in which the PRA and the Act as amended by the LMRA differ with respect to both union-security clauses and dues-checkoff authorizations is that Congress recognized that by granting postal employees the unrestrained choice of whether to provide even limited support to the union that represents them, it was at the same time eliminating even the possibility of an important source of union viability, i.e., a foundation of financial core members who would provide an ongoing source of financial support for the union. By wording section 1205 so as to require at least some period of irrevocability of voluntarily executed checkoffs, Congress gave back to the unions some part of what they lost in the union-security area. Specifically, section 1205's restriction on revocability of checkoffs guarantees postal unions at least a certain level of predictability of dues income to compensate for the absence of financial core-union security arrangements available in private sector employment in the majority of States.

We therefore find that reading section 1205 of the PRA according to its plain meaning is consistent with the overall structure of the PRA and the labor relations context in which it was enacted.

IV. CONCLUSION

As the undisputed facts of this case reveal, Dalton freely executed a checkoff authorization in October 1982 and tried to revoke it in January 1985. In accord with the terms of the PRA, as implemented by the parties' collective-bargaining agreement and as clearly stated within the checkoff authorization itself, employees choosing to become members of the Union and to have their dues obligations fulfilled through the checkoff system, are obligated to remain subject to the checkoff for a full 1-year period, and for successive 1-year periods thereafter, allowing only for a 10-day open period each year prior to the anniversary date of the checkoff's execution. We find that this system comports fully with the terms of the PRA. Under the plain meaning of section 1205(a) of the PRA, the Respondent was warranted in refusing to implement Dalton's revocation request because it was outside the permissible revocation periods. The complaint allegations of violations of Section 8(a)(1) and (2) of the Act are therefore not established and, accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

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[15] It should be noted that the statute governing Federal employment labor relations, which also grew out of Executive Order 11491, contains a similar restriction. (5 U.S.C. § 7115, ''Allotments to representatives'' states that union dues-checkoff authorizations ''may not be revoked for a period of one year.'' The only exceptions to the 1-year revocation bar are (1) if the bargaining agreement ceases to apply to the employee, and (2) if the employee is *suspended* or expelled from membership in the union. We note that resignation from union membership is not included as a basis justifying checkoff revocation within the proscribed 1-year period. The Federal Labor Relations Authority, which has jurisdiction over Federal employment and administers this statute, has construed this 1-year revocation bar strictly in case law, i.e., revocations during that period are not permitted. See *U.S. Army, U.S. Army Material Development and Readiness Command, Warren Michigan*, 7 F.L.R.A. No. 30 (1981).

[16] 39 U.S.C. § 1207.

[17] This was the type of situation involved in *Postal Service*, 248 NLRB 5 (1980).

[18] 39 U.S.C. § 1209(c)

[19] Cf. *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963).